REMARKS

Claims 1-10 are currently pending in this application with claims 1-5 amended, and claims 6-10 added by these amendments. No new matter has been added. Support for these amendments can be found, for example, on Page 4, lines 10-20, and Fig. 1. As well as page 4, lines 31-32.

The office action objects to the specification, as apparently the copy of the application forwarded to the Examiner contained a typographical error. Review of Applicant's attorney's copy of the application revealed no such error, however, in an effort to clarify any issue, the allegedly offending paragraph has been resubmitted herewith for replacement of the original. Withdrawal of the objection is requested.

Next, it appears that claim 5, as submitted in the preliminary amendment inadvertently contained the word REMARKS. This was a formatting error on the part of Applicant's attorneys and not an amendment to the claims. Claim 5 as submitted herewith does not contain the word REMARKS. Withdrawal of the objection is requested.

The office action rejects claims 1-4 under 35 U.S.C. § 103(a) as unpatentable over Japanese Patent No. 200027030 to Kei in view of U.S. Published Patent Application No. 2003.0236745 to Hartsel.

As amended in dependent claims 1 and 2 recite an subscriber serving apparatus including monitoring means for monitoring a data stream being delivered from the delivery server to the user terminal. As a result it is not necessary for the user to monitor the data stream to identify the delivery quality of the data stream. Further, the billing server includes judging means for

judging the amount of billing to be charged to the user based on the delivery quality of the monitored data stream, and bills the user based on the result of the judgment made by the judging means. Thus even when image disturbances or abrupt breaks occur in the data stream during the playing of the user-requested content, a properly adjusted fee is billed to the user.

As acknowledged by the Examiner, Kei does disclose judging means as recited in independent claims 1 and 2, nor does it teach billing the user based on the result of the judging. For this reason, the Hartsell reference is relied upon. Claim 11 of Hartsell, teaches, as best understood, that the billing information is generated according to the content delivery price model associated with a respective content delivery quality model of the delivered content.

However, the relied upon portions of Hartsell do not teach or suggest either that the "subscriber serving apparatus includes monitoring means for monitoring a data stream being delivered from the delivery server to the user terminal," or the "judging means for judging the amount of billing to be applied to the user terminal based on delivery quality of the monitored data stream." As best understood, Hartsell teaches that the end point management node 1440 shown in Fig. 9A, the internet traffic management node 1620 shown in Fig. 9B or the multiple edge information management nodes 1520 shown in Fig. 9C. However, none of these is a subscriber serving apparatus serving at least one user terminal. The end point management node 1440 is located within a management data center 1420 (see paragraph [02510]), the internet traffic management node 1620 is present between a convention data center/content server 1630 and the core of network 1600 (see paragraph [0252]), and the multiple edge information nodes 1520 are interconnected with an intelligent signal path or network IPC 1530 (see paragraph [0254]). Further, none of these management nodes includes monitoring means as recited in independent claims 1 and 2.

In claim 42 of Hartsell, there is the expression "wherein at least one of said customized content delivery price model, said customized content delivery price model, said customized content delivery quality model, or a combination thereof is based on characteristics associated with the last mile network infrastructure of a user requesting said content delivery." In paragraph [0039] of Hartsell there is a statement defining the last mile network as "subscriber's local connection bandwith, computer processor speed, bandwidth guarantee, etc." Therefore the term last mile cannot be considered as "delivered quality of the monitored data stream as recited in independent claims 1 and 2. Thus it is submitted that, Hartsell does not teach "monitoring means for monitoring a data stream being delivered from the delivery server to the user terminal."
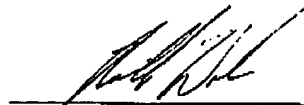
Indeed, it is not surprising that Hartsell should not have these features of the instant claims given that the object of Hartsell is to increase performance, to improve the predicatability in the capability of a network server, switch or router, or to accelerate in the delivery of information across a network. In contrast, it is an object of the present invention as recited in the claims to provide a content delivery system that properly bills the user according to the delivery quality of the serviced used.

Based on the foregoing, it is submitted that independent claims 1 and 2 patentably distinguish over the relied upon portions of Kei and Hartsell and are allowable. Further it is submitted that the relied upon portions of Sako do not address these shortcomings. Accordingly, claims 1 and 2 patentably distinguish over the relied upon portions of the cited references and are allowable. Claims 3-10, which depend from one of these allowable base claims are allowable therewith.

In view of the remarks set forth above, it is submitted that this application is in condition for allowance which action is respectfully requested. However, if for any reason the Examiner should consider this application not to be in condition for allowance, the Examiner is respectfully requested to telephone the undersigned attorney at the number listed below prior to issuing a further Action.

Any fee due with this paper may be charged to Deposit Account No. 50-1290.

Respectfully submitted,

Nathan Weber
Reg. No. 50,958

CUSTOMER NUMBER 026304
Telephone: (212) 940-8564
Fax: (212) 940-8986 or 8987
Docket No.: FUJA 20.933 (100794-00551)
NDW:fd